United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

Date: September 30, 1999

TO: Rochelle Kentov, Regional Director
Region 12

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice 554-1433-8300
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SUBJECT: IBEW (Jefferson Smurfit Corp.) 554-1467-7200
Case 12-CB-4471

This Section 8(b)(3) case was submitted for advice regarding whether the International union is a joint bargaining representative along with one of its locals and, if so, whether it is required to sign a collective-bargaining agreement signed and implemented by the local and the Employer.

FACTS

Jefferson Smurfit Corporation ("the Employer") and its predecessor, Container Corporation of America, have been parties to collective bargaining agreements covering the hourly workforce of the Fernandina Beach, Florida plant since the 1950's.[1] The unit involved in the instant matter is a group of about 55 employees. No copy of the original certification from the 1950s can be located, thus making it impossible to ascertain whether or not the International Brotherhood of Electrical Workers ("the International") was certified as a joint representative with IBEW Local Union 1924 ("the Local") of the employees in the unit. The parties agree that at least the Local was certified as the representative in approximately 1955.

The most recent contract was signed by the Local and the Employer on June 11, 1997, after approximately two days of negotiations, as the result of an early reopener proposed by the Employer. The term of the current contract, as extended, runs until June 1, 2003. As in past contract negotiations, a representative from the International participated in the negotiations along with the president of the Local but, in accordance with past

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[1] The Employer purchased the mill during the term of the six-year agreement commencing June 2, 1992. The parties do not dispute that the Employer is a successor to Container Corporation of America, and that it has at all times relevant hereto adopted the contract.

practice of the International, did not sign the contract.[2] The Employer informed the Local that they needed to have the International either sign or approve the contract, and the Local said that it would take care of it. In February 1998, the Local informed the Employer that it had submitted the contract to the International, but had nothing to show that it had been approved. The Employer then demanded that the International sign the contract. After receiving no response from the International, the Employer filed the instant charge on May 11, 1998. The Employer has continued to abide by the contract, as extended.

With respect to the three prior contracts since 1983 (1983, 1986 and 1992), the Local submitted the contracts signed by the Local and the Employer to the International after implementation for its "approval," which in each case was indicated by a rubber stamp with "approved," the date, and the International president's name. The rubber stamp applied to the 1986 and 1992 contracts also states that "This Approval does not make the International a party to this agreement." Each of the three contracts has a blank signature line for the International representative. An Employer manager acknowledges that, since his experience with collective bargaining on behalf of the Employer and its predecessor began in 1983, the International has failed or refused to sign contracts, although their approval by the International president was noted in the manner described above.

The 1992 contract, extended by the 1997 re-opener, contains several references to both the International and the Local as the employees' representative for purposes of collective bargaining. The cover of the printed contract reads:

AGREEMENT

by and between

Container Corporation of America
Fernandina Beach, Florida
Mill Division

and the

International Brotherhood of
Electrical Workers Union

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[2] The International representative who participated in negotiations did not attend the contract signing.

Local No. 1924

The introductory paragraph on page one of the contract states:

> This agreement made and entered into by and between the Fernandina Beach, Florida Mill Division of Container Corporation of America, hereinafter called the "Company" and the International Brotherhood of Electrical Workers and its Local Union No. 1924, hereinafter called the "Union". . . .

The 1992 contract's recognition paragraph states:

> Section 1. The Company recognizes the Union and its Local 1924 as the exclusive representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment for all Electricians, Shift Electricians, Instrument Mechanics, Shift Instrument Mechanics and Helpers; but excluding office employees, clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

Additionally, the contract's grievance procedure has provisions for involvement of representatives of the International. According to the Employer, the contract language of the introductory paragraph and the recognition clause has been the same since at least 1983.

In contrast, the International argues that it is not a "party" to the contract. In support of its contention, it relies upon the lack of a copy of the original certification of bargaining representative, its refusal to sign prior contracts, and the inclusion of the disclaimer in its rubber-stamped "approval" of the 1986 and 1992 contracts that "This approval does not make the International a party to this agreement." Although aware of the issue, the International does not address the possibility that it may, with the Local, be a joint representative of the bargaining unit employees. It does not deny that it is bound by the terms of the contract, maintaining only that it has no party relationship which might render it liable under the contract.

ACTION

We conclude that complaint should issue, absent settlement, alleging that the International violated Section 8(b)(3) of the Act by refusing to sign the collective bargaining agreement upon the request of the Employer.[3]

We agree with the Region that the Local and the International constitute a joint representative. As the International notes, there is no certification document that proves or disproves joint representative status. However, contract language in prior contracts dating at least as far back as 1983 refers to the combination of the Local and the International as "the Union," and recognizes "the Union and its Local 1924" as the collective-bargaining representative. Prior contracts' grievance procedures call for participation by International representatives, who have also routinely participated in contract negotiations. Until the instant contract, the International president has approved contracts. In all these circumstances, the International is part of a joint bargaining representative.[4] The International's past "disclaimers" of "party to the contract" status are insufficient to nullify its status as joint bargaining representative, especially in light of its failure to object to the renewal of the same contractual language cited above regarding recognition and defining "Union" in the 1997 contract extension negotiations.[5]

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[3] We agree with the Region that Section 10(b) does not preclude complaint in this case, as the International's unequivocal refusal to sign did not occur until within six months of the filing of the charge.

[4] See Ste. Genevieve Local 169, Ceramic Workers (Mississippi Lime Co.), 191 NLRB 658, 664 (1971)(although not certified with the local, the international became joint representative through, inter alia, preamble and recognition clause in contract and international's participation in negotiations).

[5] See, e.g., Teamsters Local 595 (Sweetener Products), 268 NLRB 1106, 1111 (1984)(union attempted to disclaim representation and transfer it to sister local after reaching agreement with employer; union violated Section 8(b)(3) by failing to sign negotiated agreement).

Under Section 8(d) of the Act, each party to a collective bargaining agreement is required to sign that agreement. In H. J. Heinz Company v. National Labor Relations Board, 311 U.S. 514 (1941), the Supreme Court affirmed the Board's order requiring an employer to sign a collective bargaining agreement which it had made with a union. Heinz establishes the principle that parties to agreed-upon contracts are obligated to sign them upon demand of the other party. In the words of the Supreme Court,

> The freedom of [the employer] to refuse to make an agreement relates to its terms in matters of substance and not, once it is reached, to its expression in a signed contract, the absence of which, as experience has shown, tends to frustrate the end sought by the requirement for collective bargaining. 311 U.S. at 297.

Subsequent Board decisions have affirmed that unions which are joint representatives with other unions and which have agreed to collective bargaining agreements cannot refuse to sign those agreements. If none of the entities comprising a joint representative signs the contract after agreement has been reached, there is a Section 8(b)(3) violation as to each entity.[6] The Board has also consistently held that if an employer demands that all entities comprising a joint representative sign the agreement, all joint representative entities are required to do so, even though one or more of those entities have already signed. Thus, in Operating Engineers Local 525 (Clark Oil), 185 NLRB 609, 611 (1970) and Truck Drivers Local 705 (Roper Corporation), 244 NLRB 522, 525 (1979), unions which were parts of multi-union joint bargaining representatives violated Section 8(b)(3) of the Act by refusing to sign, upon request, contracts negotiated and then signed by their joint representatives.[7] While in each

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[6] See, e.g., United Cement, Lime and Gypsum Workers International Union, et al.(Nevada Cement Co.), 173 NLRB 1390, 1390A-1390B (1968); Mississippi Lime Co., 191 NLRB at 664-65.

[7] See also International Alliance of Theatrical Stage Employees (Walt Disney World Co.), 215 NLRB 299, 300 (1974). In United Paperworkers International Union (International Paper Company), 295 NLRB 995 (1989), two international unions were recognized as joint representative. One of the unions was found to have

of these cases there apparently was an existing practice for all entities of the joint representative to sign contracts, the Board gave no weight to that past practice in requiring the recalcitrant entities to sign when requested to do so.

Although there is another line of cases emphasizing that the signature of one entity which is part of a joint representative binds all the constituent entities such that a bargaining obligation exists, regardless of whether or not one or more of those entities refuses or fails to sign the contract, those cases beg the question of whether there is a Heinz obligation for the nonsignatory entity to sign upon request. Thus, in Pharmaseal Laboratories, 199 NLRB 324, 325 (1972), a "contract bar" representation case in which a local and an international were certified jointly as the single statutory representative of the unit, the Board found that the local's failure to sign the contract did not remove it from being obliged to bargain on behalf of the unit employees "on a joint basis and with one voice" with the international. Therefore, because the international had signed the contract, the contract constituted a bar to a decertification petition.[8] Similarly, in Adobe Walls, Inc., 305 NLRB 25, 27 (1991), affd. 19 F.3d 1433 (6th Cir. 1993) (Table), two local unions comprised a joint representative, "and the signature of one of the two locals acting on behalf of the joint representative was all that was required to bind the two locals to the contract." When the employer attempted to withdraw recognition from the joint representative union which had signed the contract, and repudiate the contract mid-term on the basis that the other local had not signed the contract, the Board found that the employer violated Section 8(a)(5). However, neither Pharmaseal nor Adobe

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violated Section 8(b)(3) when it refused to sign a contract ratified and signed by both internationals' locals; the other international, which was not charged, did not deny the existence of a binding agreement, although it is not clear that it had signed the agreement.

[8] Pharmaseal was distinguished in Crothall Hospital Services, Inc., 270 NLRB 1420, 1423 and n.17 (1984), another contract bar case in which the Board found that an international, which was not jointly certified with a local but which was voluntarily added to the contract as a named party, was required to sign the contract in its capacity as a party to the contract before the contract would become a bar. The Board specifically found that the employer's statutory bargaining obligation ran only to the local.

Walls dealt with an alleged Heinz violation, but rather with the proposition that the failure of *all* parties to a bargaining relationship to sign a contract does not forestall the obligation of all parties to honor their bargaining obligations.[9]

Under these circumstances and the caselaw discussed above, we conclude that complaint should issue, absent settlement, alleging the International violated Section 8(b)(3) by refusing to sign the collective bargaining agreement when requested by the Employer to do so.

B.J.K.

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[9] In District Council of Painters No. 8 (Northern California Drywall Assn.), 326 NLRB No. 9 (1998), three district councils comprised of local unions were recognized as a joint representative by an employer association, and the actions of one district council acting on behalf of the joint representative "Union" was all that was required to bind all the District Councils to the collective bargaining agreement. One of the district councils walked out of negotiations and entered into purported contracts with individual association members. The Board found that that district council was bound by the terms of the association contract and enjoined it from giving effect to the individual contracts, but did not address the issue of whether the district council would also have been required to sign the association contract if such a request had been made. Thus, there was no alleged Heinz violation as in the instant case.